

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

**SNMP RESEARCH, INC. and SNMP
RESEARCH INTERNATIONAL, INC.,**

Plaintiffs,

v.

**BROADCOM INC.; BROCADE
COMMUNICATIONS SYSTEMS LLC;
AND EXTREME NETWORKS, INC.**

Defendants.

§ **Case No. 3:20-cv-00451**

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Jury Demand

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**DECLARATION OF OLIVIA L. WEBER IN SUPPORT OF PLAINTIFFS' OPPOSITION
TO EXTREME NETWORKS, INC.'S MOTION TO REFER QUESTIONS TO THE
REGISTER OF COPYRIGHTS**

I, Olivia L. Weber, declare and attest as follows:

1. I am an attorney at the law firm of Irell & Manella LLP, counsel of record for SNMP Research, Inc. ("SNMP Research" or "Plaintiff") and SNMP Research International, Inc. (together, "Plaintiffs") in this action. I am a member in good standing of the State Bar of California and have been admitted pro hac vice to this Court. I have personal knowledge of the facts set forth in this Declaration and, if called to testify, I could and would testify competently thereto under oath.

2. Attached hereto as Exhibit A is a copy of the response from the Register of Copyrights in *Fashion Avenue Sweater Knits, LLC v. Poof Apparel Corp., et al.*, Case No. 2:19-cv-06302-CJC-JEM, C.D. Cal., which can also be found at Dkt. 129-1 on the *Fashion Avenue* ECF docket.

3. Attached hereto as Exhibit B is a copy of the 2008 Annual Report of the Register of Copyrights from the United States Copyright Office, which states on page 13 that the PRO-IP Act "amends section 411 of the copyright law to codify the doctrine of fraud on the Copyright Office in the registration process."

4. Attached hereto as Exhibit C is a copy of the source code excerpt that Dr. Case submitted to the Copyright Office alongside SNMP Research's copyright registration application for NETMON, Associated Applications, and Libraries Version 15. Page 2 of this excerpt contains the following language:

This software is furnished under a license and may be used and copied only in accordance with the terms of such license and with the inclusion of the above copyright notice. This software or any other copies thereof may not be provided or otherwise made available to any other person. . . . This software is an unpublished work subject to a confidentiality agreement and is protected by copyright and trade secret law. Unauthorized copying, redistribution or other use of this work is prohibited. The above notice of copyright on this source code product does not indicate any actual or intended publication of such source code.

This language is repeated again on pages 4, 6-7, 9, 11, 13, 15, 17-18, 21, 23, 42096, 42101-104, 42106, 42108, 42110, 42112, and 42114 of Exhibit C. I have also reviewed each of the source code excerpts that Dr. Case submitted to the Copyright Office for SNMP Research's seven other copyright registration applications, and each of these seven other source code excerpts contain the same language quoted above.

5. The Form TX and the "Help" pages provided by the Copyright Office that were available in 2011—at the time Dr. Case submitted the copyright registration applications for SNMP Research—repeated the statutory definition of "publication." Attached hereto as Exhibit D is a copy of the Copyright.gov Form TX, which was captured by Archive.org on February 3, 2011 at the following html link: <https://www.copyright.gov/forms/formtx.pdf>. Attached hereto as Exhibit E is a copy of a portion of the Copyright.gov "Help" page defining the term "publication," which was captured by Archive.org on January 16, 2011 at the following html link: <http://www.copyright.gov/help/faq/faq-definitions.html>.

6. The 2011 Form TX from Copyright.gov (shown in Exhibit D) states that registrants should "[u]se Form TX for registration of published or unpublished nondramatic literary works,

excluding periodicals or serial issues.” Exhibit D at 1. The 2011 Form TX also refers to the Copyright Act’s definition of “Publication”:

Publication: The statute defines “publication” as “the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” A work is also “published” if there has been an “offering to distribute|copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display.” Give the full date (month, day, year) when, and the country where, publication first occurred. If first publication took place simultaneously in the United States and other countries, it is sufficient to state “U.S.A.”

7. The 2011 “Help” page from Copyright.gov (shown in Exhibit E) includes definitions for various terms, including the term “publication.” Exhibit E at 1. The 2011 “Help” page refers to the Copyright Act’s definition of “Publication”:

What is publication?

Publication has a technical meaning in copyright law. According to the statute, “Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.” Generally, publication occurs on the date on which copies of the work are first made available to the public. For further information see Circular 1, *Copyright Basics*, section “[Publication](#).”

Executed this 3rd day of April, 2023, at Newport Beach, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Olivia L. Weber

Olivia L. Weber